IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1028 of 2007

Vennila .. Petitioner

Vs.

1. State of Tamil Nadu
   rep. by the Secretary to Government
   Dept. of Prohibition & Excise,
   Secretariat, Fort St.George,
   Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai, Office of the
   Commissioner of Police, Egmore,
   Chennai.

3. The Inspector of Police,
   K-9 Thiru.Vi.Ka.Nagar Police Station,
   Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.J.Srinivasan
For Respondents : Mr.N.R.Elango
Additional Public Prosecutor

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O R D E R
(Made by P.D.DINAKARAN,J.)

The petitioner, wife of the detenu, Kumaresan, who was incarcerated by order dated 21.6.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, seeks a writ of Habeas Corpus to call for

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the records in connection with the order of detention passed in proceedings 257/BDFGISSV/07, to set aside the same and to produce the detenu, now confined at Central Prison, Puzhal, Chennai before this Court and set him at liberty.

2. On the basis of a complaint lodged by one Dinesh that on 6.6.2007, the detenu wrongfully restrained and threatened him at the knife point and forcibly took Rs.500/- and a cell phone from his pocket and also threatened the public who came for his rescue that they would be killed and hurled the bottles taken from the nearby bunk shop in the road, which scattered all over the roadside and also made them to run on all sides seeking shelter resulting in traffic dislocation, the detenu was arrested and a case was registered in Crime No.889/2007 on the file of K9, Thiru Vi Ka Nagar Police Station, for the offence punishable under Section 392, 397 and 506(2) IPC.

3. The second respondent, taking note of the above case as a ground case and six adverse cases, ordered his detention dubbing him as a goonda.

4. The main contention of the learned counsel for the petitioner assailing the order of detention is that while all the adverse cases referred to in the grounds of detention relate to the offence punishable under Section 379 IPC (theft cases), the solitary instance of robbery mentioned in the ground case is not relevant for sustaining the order of detention. The learned counsel, in support of the said plea, relied upon the decision of the Apex Court in DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446].

5. We have heard learned Additional Public Prosecutor on the above said point.

6. As rightly pointed out by the learned counsel for the petitioner, it is evident that the adverse cases mentioned in the grounds of detention do not relate to any law and order problem. But, the offence said to have been committed by the detenu as per the ground case attracts the provisions of the Tamil Nadu Act 14 of 1982.

7.1. In DARPAN KUMAR SHARMA alias DHARBAN KUMAR SHARMA v. STATE OF TAMIL NADU [(2003) 1 CRIMES 446], cited supra, whereunder the order of detention was based on the solitary instance of robbery, the Apex Court held as follows:-

> "... Though in the grounds of detention the detaining authority had stated that by committing this offence in public the detenu created a sense of alarm, scare and a feeling of insecurity in the minds of the public of the area and thereby acted in a manner prejudicial to the maintenance of public order which affected the even tempo of life of the community, but citation of these words in the order of detention is more in the nature

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of a ritual rather than with any significance to the content of the matter. Thus, a solitary instance of robbery as mentioned in the grounds of detention is not relevant for sustaining the order of detention for the purpose of preventing the petitioner from acting in a manner prejudicial to the maintenance of public order."

7.2. That apart, the above ratio laid down by the Apex Court was followed by a Division Bench of this Court, in which one of us (P.D.DINAKARAN, J.) was a party, in MALA v. THE SECRETARY TO GOVERNMENT, PROHIBITION AND EXCISE DEPARTMENT, GOVT. OF TAMIL NADU, CHENNAI, [(2004) M.L.J. (Crl.) 306].

8. Admittedly, in the instant case, the adverse cases relate to the offence of theft punishable under Sections 379 IPC and the ground case relates to the offence of robbery punishable under Section 392 IPC and hence, we are of the opinion that the ratio laid down in DARPAN KUMAR SHARMA's case, cited supra, squarely applies to the present case on hand, which is also not disputed by the learned Additional Public Prosecutor.

9. Applying the ratio laid down by the Apex Court in Darpan Kumar Sharma's case, cited supra, we are inclined to set aside the order of detention, Accordingly, the order of detention is set aside and the Habeas Corpus Petition is allowed. The detenu is directed to be released forthwith, unless he is required in any other case.

kpl

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government
   Home, Prohibition & Excise Department
   Fort St.George, Chennai 600 009.

2. The Commissioner of Police
   Greater Chennai, Egmore, Chennai.

3. The Superintendent,
   Central Prison, Puzhal, Chennai.

4. The Joint Secretary Govt
   Public (Law & Order) Department,
   Fort St. George, Chennai.

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5. The Public Prosecutor
High Court, Chennai.

6. The Inspector of Police
K-9 Thiru.Vi.Ka Nagar Police Station,
Chennai.

+ One cc to Mr. J. Srinivasan, Advocate SR 65366

KM (co)
sg 19/11/07

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